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› THE IMPLEMENTATION OF THE DECISIONS OF THE CONSTITUTIONAL COURT OF THE REPUBLIC OF CROATIA

INTRODUCTION: THE DEVELOPMENT OF CONSTITUTIONAL JUSTICE IN THE REPUBLIC OF CROATIA

The practice of constitutional justice in the Republic of Croatia is divided into two historical periods:

- constitutional justice in the former Socialist Republic of Croatia from 1963 to 1990 – in this period Croatia was one of the six federal units (republics) of the former Socialist Federal Republic of Yugoslavia (SFRY);
- constitutional justice in the Republic of Croatia since 1990 – in the period after the Republic of Croatia gained sovereignty and independence, where 8 October 1991 is taken as the date when the Republic of Croatia broke off all state relations with the former SFRY and became a sovereign and independent state.

Acknowledging the new constitutional order in 1990, the Constitution of the Republic of Croatia from 22 December 1990 (hereinafter: the Constitution)¹ defined the composition of the Constitutional Court of the Republic of Croatia (hereinafter: the Court), and defined the content and limits of its powers.

The basic constitutional powers of the Court, in accordance with the 1990 Constitution, were the following:

- decides on the conformity of laws with the Constitution, and has the power to repeal a law if it finds that it is unconstitutional;
- decides on the conformity of other regulations with the Constitution and law and has the power to repeal or annul another regulation if it finds that it is unconstitutional and illegal;
- protects constitutional freedoms and human and civil rights in a proceeding instituted by a constitutional complaint;

1. Ustav Republike Hrvatske (The Constitution of the Republic of Croatia), *Narodne novine*, No. 56 of 22 December 1990.



- decides on jurisdictional disputes between the legislative, executive and judicial branches;
- supervise the constitutionality of the programs and activities of political parties and may ban their work if they in their programme or activities violently threaten the democratic constitutional order, unity and territorial entirety of the Republic of Croatia;
- supervises the constitutionality and legality of elections and the national referendum, and decides on the electoral disputes that are not within the jurisdiction of courts;
- on the proposal of the Government of the Republic of Croatia, establishes the permanent incapacity of the President of the Republic to perform his duty, in which case the Chairman of the Croatian Parliament temporarily assumes the duty of the President of the Republic;
- on the proposal of a two-thirds majority of all the members of the Croatian Parliament decides, by a two-thirds majority of votes of all the judges, on the impeachment of the President of the Republic. If the Court finds him liable, the President of the Republic is relieved of office by the force of the Constitution.

The 1990 Constitution has so far been amended three times.²

Crucial for the jurisdiction of the Court were the second amendments of the Constitution, enacted at the end of 2000. These amendments fundamentally changed the jurisdiction of the Court and the number of judges, which increased from the original 11 to 13.

In addition to the powers already defined in the 1990 Constitution, the constitutional amendments of 2000 extended its jurisdiction as follows:

- may decide on the constitutionality of laws and the constitutionality and legality of other regulations which have lost their legal force, providing that not more than one year has passed from the moment of loss of legal force until the request or proposal to institute proceedings is lodged;
- observes the realisation of constitutionality and legality and notifies the Croatian Parliament on instances of unconstitutionality and illegality observed;
- if it finds that the competent body did not pass a regulation for executing the provisions of the Constitution, laws and other regulations, and was obliged to pass such a regulation, it shall

2. Ustavni zakon o izmjenama i dopunama Ustava Republike Hrvatske (The Constitutional Act on Revisions and Amendments of the Constitution of the Republic of Croatia) was published in *Narodne novine*, No. 135 of 15 December 1997 (the consolidated wording was published in *Narodne novine*, No. 8 of 5 January 1998). The second Amendments of the Constitution of the Republic of Croatia were published in *Narodne novine*, No. 113 of 16 November 2000 (the consolidated wording was published in *Narodne novine*, No. 124 of 11 December 2000), and the third Amendments of the Constitution of the Republic of Croatia were published in *Narodne novine*, No. 28 of 2 April 2001 (the consolidated text was published in *Narodne novinae*, No. 41 of 7 May 2001, together with its correction published in *Narodne novine*, No. 55 of 15 June 2001).

so inform the Government of the Republic of Croatia, and it shall inform Parliament about the regulations that the Government was obliged to pass;

- gives preliminary approval for the detention and impeachment of the President of the Republic;
- decides on an appeal against a decision of the National Judicial Council to relieve a judge of duty, and decides on an appeal against a decision of the National Judicial Council on the disciplinary responsibility of a judge, both within a term of 30 days from the day when the appeal was filed (the decision precludes the right to a constitutional complaint).

I. GENERAL RULES CONCERNING THE IMPLEMENTATION OF DECISIONS OF THE COURT

The Constitutional Act on the Constitutional Court of the Republic of Croatia (hereinafter: CACCRC)³ contains general provisions about the binding nature and manner of implementation of all the Court's decisions. Article 31 CACCRC provides:

“(1) The decisions and the rulings of the Constitutional Court are binding and every natural and legal person shall obey them.

(2) All the bodies of the central government and of local and regional self-government shall, within their constitutional and legal jurisdiction, execute the decisions and the rulings of the Constitutional Court.

(3) The Government of the Republic of Croatia shall ensure, through the bodies of central administration, the execution of the decisions and the rulings of the Constitutional Court.

(4) The Constitutional Court may determine which body shall be authorized for the execution of its decision and/or its ruling.

(5) The Constitutional Court may determine the manner in which its decision and/or its ruling shall be executed.”

In addition to the aforementioned general provisions, the CACCRC also provides for some special mechanisms in connection with the implementation of the Court's decisions.

In this paper we will show in more detail the implementation of decisions passed by the Court in the four kinds of proceedings that it most frequently deals with in practice:

3. Ustavni zakon o Ustavnom sudu Republike Hrvatske (The Constitutional Act on the Constitutional Court of the Republic of Croatia) was published in *Narodne novine*, No. 99 of 29 September 1999. This act was amended by the Ustavni zakon o izmjenama i dopunama Ustavnog zakona o Ustavnom sudu Republike Hrvatske (Constitutional Act on the Revisions and Amendments of the Constitutional Act on the Constitutional Court of the Republic of Croatia), published in *Narodne novine*, No. 29 of 22 March 2002, and the consolidated wording was published in *Narodne novine*, No. 49 of 3 May 2002.



- the implementation of decisions that the Court passes in proceedings reviewing the constitutionality of laws,
- the implementation of decisions that the Court passes in proceedings reviewing the constitutionality and legality of other regulations,
- the implementation of decisions that the Court passes in proceedings deciding about constitutional complaints,
- the implementation of decisions that the Court passes in proceedings deciding on the reasonable time of judicial proceedings.

II. THE IMPLEMENTATION OF DECISIONS THAT THE COURT PASSES IN PROCEEDINGS REVIEWING THE CONSTITUTIONALITY OF LAWS

In proceedings reviewing the constitutionality of laws the Court is empowered to repeal any law passed by Parliament, or to repeal any provisions of a law, if it finds that a law or some of its provisions are not in conformity with the Constitution.

A law so repealed, or provisions within it, lose legal force on the day when the Court's decision is published in the official gazette of the Republic of Croatia, *Narodne novine*, unless the Constitutional Court sets another term. When a law or some of its provisions lose legal force because they do not comply with the Constitution, they are automatically no longer applied in the legal order of the Republic of Croatia.

STATISTICAL DATA:

In the period from 1990 down to and including 15 November 2005 the CC filed 2,955 requests or proposals to review the constitutionality of laws. By the same date the CC reached a decision on 2,494 requests or proposals (84,40%), and in 234 cases it repealed entire laws or their certain provisions for reasons of unconstitutionality (9,38%).

II.1) Problems concerning the implementation of decisions of the Court

In practice, problems appeared in several cases in connection with the power of the Court to itself set the term determining when a law, or some of its provisions, which were found unconstitutional, are to lose legal force.

The Court usually exercises this power in situations when the immediate repeal of a law, or some of its provisions, would create a legal void in the legal order, and the issues in question concern social relations that require regulation. In such cases the Court sets an appropriate deadline for Parliament to replace the unconstitutional law, or its unconstitutional provisions,

with others that are in conformity with the Constitution. In the meantime the law or the legal provisions that were found unconstitutional remain in force.

In several cases Parliament did not enact a new law within the term set, or did not change the unconstitutional legal provisions. Therefore, the Court was forced, on the request of Parliament or of the Government of the Republic of Croatia, to several times extend the term when the unconstitutional law, or its unconstitutional provisions, were to lose legal force.

AN EXAMPLE FROM CONSTITUTIONAL CASE-LAW:

In its decision of 21 April 1999⁴ the Court repealed some provisions of the *Compensation for Property Expropriated During the Yugoslav Communist Rule Act*. This decision was not implemented for more than 3 years, until 1 July 2002, because Parliament did not change the unconstitutional legal provisions within the given term, so the Court was forced to extend the postponement of loss of legal force of the unconstitutional legal provisions five times.

The Croatian legal order thus has no legally determined final deadline for the loss of force of a law that the Court repealed for unconstitutionality. A legal arrangement of this kind can have many damaging effects in the legal order of a country, among which we especially mention the danger of impaired legal security and the violation of the principle of legal certainty and the principle of the legitimate expectations of parties, to which the unconstitutional law is applied for an uncertain period of time.

II.2) Effect of the Court's decision to repeal a law on the individual acts passed on the grounds of that law

One of the most important questions in relation to the implementation of the Court's decision to repeal a law, or some legal provisions, is certainly the following: does the fact that a law or some of its provisions were found to be unconstitutional affect the legal fate of individual acts that were passed on the grounds of the unconstitutional law, or of the unconstitutional legal provisions, before the Court passed the decision about its repeal?

The CACCRC explicitly provides that a final sentence for a criminal offence, grounded on a legal provision that has been repealed because it does not comply with the Constitution, does not produce legal effects from the date of entry into force of the Constitutional Court's decision repealing the legal provision on the grounds of which the sentence was passed. The sentence may be changed through the appropriate application of the provisions on renewing criminal proceedings.

4. Decision and ruling of the Court, No. U-I-673/1996 etc. of 21 April 1999, *Narodne novine*, No. 39/99.



In matters of a civil and administrative nature, any natural or legal person who submitted to the Court a proposal to review the constitutionality of a law or some of its provisions, and whose proposal the Court accepted and repealed the disputed law or legal provisions, has the right to submit a request to the competent body to change the individual act whereby his rights were violated, and which was passed on the grounds of the disputed and repealed law, through the appropriate application of the provisions on renewing proceedings. The request for changing the final individual act may be submitted within a term of six months from the day when the Constitutional Court's decision was published in *Narodne novine*.

On the other hand, if a final court sentence for a crime grounded on a legal provision that has been repealed has produced legal effects, or if changing the final individual act cannot redress the damage resulting from the violation of the party's rights in civil and administrative matters, the party may within a term of six months from the day when the Constitutional Court's decision is published in *Narodne novine* file a suit for damages with the competent court to redress the detrimental effects.

Finally, in proceedings in which no final decision was passed before the date of entry into force of the Constitutional Court's decision repealing the law, or some of its provisions, and this law was to be directly applied in the legal matter in issue, the repealed law or its repealed provision are not applied from the date when the Constitutional Court decision enters into force.

This shows that the legal order of the Republic of Croatia includes structured mechanisms for redressing the damaging effects suffered by citizens in cases when an unconstitutional law, subsequently repealed by a decision of the Court, has already been applied to their individual case.

It has been shown in practice, however, that the legal mechanisms mentioned are sometimes not sufficient to rectify the damage suffered by the applicant because his or her individual rights or obligations were decided about on the grounds of a law that was later found unconstitutional. In such cases the Court uses its powers in Article 31/4,5 CACCRC, and itself determines which body will implement its decision and how the decision will be implemented.

AN EXAMPLE FROM CONSTITUTIONAL CASE-LAW:

The applicant of the constitutional complaint was evicted from a flat owned by the Ministry of Defence of the Republic of Croatia on the grounds of a law that the Court later repealed as unconstitutional. The flat from which the applicant had been forcibly evicted was sold to a third party before the Court found that the law, on the grounds of which the eviction had been carried out, was unconstitutional. Therefore, the Court ordered the Government of the Republic of Croatia to redress, within one year, the damaging effects of the unconstitutional and illegal decision on evicting the applicant

from the flat. In doing so it took into account that a third party had in the meantime lawfully established property rights to that flat. The Government of the Republic of Croatia, within the given deadline, provided the applicant with possession of an adequate flat owned by itself, and with the right to purchase it under the same conditions that the applicant would have enjoyed in purchasing the flat from which she had been unconstitutionally evicted.⁵

III. THE IMPLEMENTATION OF DECISIONS THAT THE COURT PASSES IN PROCEEDINGS REVIEWING THE CONSTITUTIONALITY AND LEGALITY OF OTHER REGULATIONS

In addition to laws enacted by Parliament, the Court is also empowered to review the conformity of other regulations with the Constitution and law, such as decrees and other regulations issued by the Government of the Republic of Croatia, ministerial ordinances, orders and instructions, and statutes and other regulations made by units of local and regional self-government and by other legal persons vested with public powers.

The Court has the right to repeal these regulations, which are below a law in legal force. The effects of repealing them are identical to those produced by the repeal of a law (see point II of this article).

Unlike in the case of a law, however, the court also has the authority to annul a regulation or some of its provisions, which means that it annuls the regulation itself from the day when it entered into force, and all the legal effects that it produced (effect of the Court's decision *ex tunc*).

A regulation may be annulled in two legal situations: first, if the Court finds that the regulation violates human rights and fundamental freedoms guaranteed in the Constitution, and second, if the Court finds that it groundlessly places individuals, groups or associations in a more or less privileged position. When it passes a decision annulling a regulation the Court is obliged to take all the circumstances important for the protection of constitutionality and legality into consideration, and especially the gravity of the violation of the Constitution or law and the interest of legal security.

The effects of annulling a regulation are fundamentally broader than the effects of repealing a regulation. In the case of repealing a law, or another regulation, only the person who submitted to the Court the proposal to review its constitutionality, or its constitutionality and legality, has the right to request the change of the final individual act passed on the grounds of the unconstitutional law, or of the unconstitutional or illegal regulation, which is damaging for the applicant.

5. Decision of the Court, No. U-VIII-1271/2000 of 27 November 2003, *Narodne novine*, No. 190/03.



In cases of annulling a regulation, however, any natural and legal person whose right was violated by a final individual act passed on the grounds of the annulled provision of the regulation (not only the applicant) has the right to submit a request to the competent body to change that individual act through the appropriate application of the provisions on renewed proceedings. If the damage caused cannot be redressed in this way, each of these persons has the right to file a suit for damages with the competent court to redress the detrimental effects.

STATISTICAL DATA:

In the period from 1990 down to and including 15 November 2005 the CC filed 1,776 requests or proposals to review the constitutionality and legality of particular regulations. By the same date the CC decided on 1,546 requests and proposals (87,05%), and in 100 cases it repealed particular regulations or their provisions on the grounds of unconstitutionality and illegality (6,47%).

On the other hand, the CC has very rarely used its powers to annul a regulation. To date the CC has annulled only 13 regulations, and 11 of these annulments were made before 15 June 1993.⁶

The most recent proceeding has been ongoing before the Court about the need to annul the so-called *Authentic Interpretation of the Decision Amending the Detailed Development Plan of the City of Split*, passed by the representative body of the City of Split (unit of local government). Two issues have appeared in the proceedings: first, is an authentic interpretation of regulations permitted in principle, and second, did the body that passed the so-called authentic interpretation in fact change the contents of the regulation without implementing the procedure necessary for amending a regulation? The case was being examined as No. U-II-1362/2005, based on a request presented by the Government of the Republic of Croatia.⁷

IV. THE IMPLEMENTATION OF DECISIONS THAT THE COURT PASSES IN PROCEEDINGS DECIDING ON CONSTITUTIONAL COMPLAINTS

Most of the work the Court does today involves deciding on constitutional complaints. In the period from 1990 to 15 November 2005 the Court filed a total of 28,707 cases, 22,907 of which were constitutional complaints (79,80%).

6. These are the following decisions of the Court: U-II-331/1990 (*Narodne novine*, No. 1/91), U-II-014/1991 (*Narodne novine*, No. 4/91), U-II-023/1991 (*Narodne novine*, No. 4/92), U-II-026/1991 (*Narodne novine*, No. 7/92), U-II-034/1991 (unpublished), U-II-039/1991 (*Narodne novine*, No. 10/91), U-II-056/1991 (*Narodne novine*, No. 7/92), U-II-083/1991 (*Narodne novine*, No. 35/91), U-II-015/1992 (*Narodne novine*, No. 70/92), U-II-204/1992 (*Narodne novine*, No. 110/93), U-II-258/1992 (*Narodne novine*, No. 69/93) and U-II-2074/2001 (*Narodne novine*, No. 67/03, 98/03-corr.) and U-II-2074/2001 (*Narodne novine*, No. 67/03, 98/03-corr.).

7. Decision of the Court, No. U-II-1362/2005, U-VIII-3569/2005 (*Narodne novine*, No. 125/05).

In the Republic of Croatia we must distinguish between two kinds of constitutional complaints:

1) constitutional complaints with the designation U-III, which are lodged against the individual act of a body of the central government, a body of local or regional self-government, or a legal person with public authority (hereinafter: the competent body), which decided about the applicant's rights and obligations, or about criminal charges against him (hereinafter: primary constitutional complaints);⁸

2) constitutional complaints with the designation U-III A, lodged for the unreasonable time of a particular judicial proceeding, which are lodged with the Constitutional Court during the judicial proceeding, before the court passes a final decision deciding on the applicant's rights and obligations, or about criminal charges against him.⁹

IV.1) Deciding on primary constitutional complaints

The primary constitutional complaint always disputes an individual act of a competent body against which the applicant has exhausted all legal expedients in the Republic of Croatia.

In the Republic of Croatia judicial protection is provided against all individual acts passed by competent bodies, so the constitutional complaint is in fact always lodged after the competent court of last instance has passed final judgment in the proceedings about the applicant's rights and obligations, or about criminal charges against him. The deadline of 30 days for lodging a constitutional complaint begins to run on the day when the judgment or ruling of the highest appellate court that decided on the applicant's rights or obligations, or about criminal charges against him, is served.

STATISTICAL DATA:

In the period from 1990 down to and including 15 November 2005 the CC filed 19,929 primary constitutional complaints, 16,005 (80,31%) of which were solved by that date.

In proceedings instituted by a constitutional complaint the Court examines whether the judgments about the applicant's rights or obligations, or about criminal charges against him,

8. The constitutional complaint may also be lodged by everyone who deems that the individual act of a body of central government, a body of local and regional self-government, or a legal person with public authority has violated his/her right to local and regional self-government guaranteed by the Constitution. Cases of this kind are very rare in the case-law of the Court, and the paper will not discuss constitutional complaints lodged for violation of the right to local self-government.

9. There is also a third kind of constitutional complaint designated U-III B, but their number in the total number of constitutional complaints filed is negligible (46). The legal grounds for lodging them is given in footnote 11 of this paper.



violated any of his or her human rights or fundamental freedoms guaranteed in the Constitution (so-called constitutional right).

The Court decides on the violation of a constitutional right by passing a decision in which it refuses the constitutional complaint as groundless, or accepts it.

If it accepts the constitutional complaint, the Court has the power, in the same decision, to quash the disputed act that violated the constitutional right. If it finds that the applicant's constitutional right was violated not only by the disputed act, but also any other act passed in the same case, the Court is empowered, in the same decision, to quash this act as well, in its entirety or partly. In the statement of reasons the Court has the obligation to state which constitutional right has been violated and what the violation consists of.

If the competent body is obliged to pass a new individual act instead of the act that was quashed by the decision of the Court, the Court refers the case back to the body that passed the quashed act, for renewed proceedings. When it passes the new act the competent body is obliged to obey the legal opinion the Court expressed in the decision that quashed the act.

Finally, if the disputed act that violated the applicant's constitutional right no longer produces a legal effect, the Court passes a decision declaring its unconstitutionality and states in the dictum which of the applicant's constitutional rights the act had violated. This decision by the Court must be published in *Narodne novine* because it constructs legal grounds for filing a suit with the competent court for compensation of damage the applicant suffered from the individual act that had in a certain (past) period violated some of his constitutional rights.

The legal opinions the Court expresses in its decisions quashing individual acts of courts or other competent bodies are generally obeyed in renewed proceedings. Rarely does the competent body not obey the Court's legal opinion in renewed proceedings and passes a decision contrary to that opinion.

AN EXAMPLE FROM CONSTITUTIONAL CASE-LAW:

In one case the Court quashed the decisions of the Croatian Bar Association in which the Bar refused the applicant's request to be entered in the Register of Attorneys-At-Law and Law Trainees of the Croatian Bar Association, and the judgment of the Supreme Court of the Republic of Croatia which confirmed the legality of the disputed decisions of the Bar. The Court referred the case back to the Bar's competent body of first instance for renewed proceedings.¹⁰

In the new proceedings this body did not obey the legal opinion of the Court and it again refused the applicant's request to be entered in the Register, with an explanation that did not essentially differ from the one contained in the earlier (quashed) decision. On the applicant's renewed appeal the Bar's second-instance body confirmed the legality of the first-instance decision, and after that the applicant again appealed to the Supreme

10. Decision of the Court, No. U-III-706/2003 (*Narodne novine*, No. 120/03).

Court of the Republic of Croatia, but he at the same time informed the Court that the competent bodies of the Bar were not implementing its decision. The Constitutional Court reacted before the Supreme Court of the Republic of Croatia passed its final decision¹¹ and again passed a decision quashing the disputed decisions of the Bar. In its second decision, the Court stressed the following clear caution that its legal opinions must be obeyed:

"The Constitutional Court has found that the Executive and Management Boards of the Croatian Bar Association did not obey the legal opinion of the Constitutional Court expressed in decision no. U-III-706/2003 of 8 July 2003. Although the Executive Board of the Croatian Bar Association says, in the disputed decision, that it accepts the opinion of the Constitutional Court on interpreting the undefined concept of worthiness, expressed in decision no. U-III-439/1995 of 20 December 1995, the content of the decision shows the opposite.

By not obeying the legal opinion of the Constitutional Court and not respecting binding legal standards reached in constitutional case-law for the application of Article 49 para. 2 of the Legal Profession Act, the Executive Board of the Croatian Bar Association has in the disputed decision grossly violated the applicant's constitutional rights guaranteed in Articles 14 para. 2, 29 para. 1, 44 and 54 of the Constitution. The Management Board of the Croatian Bar Association also grossly violated the above constitutional rights by accepting in their entirety the reasons on whose basis the first-instance body refused the applicant's request for enrolment in the Register of Attorneys, assessing them as valid, legal and sufficient".¹²

Only after the second decision of the Court, No. U-IIIB-1005/2004, did the competent bodies of the Bar obey its legal opinion.

IV.2) Deciding on constitutional complaints for violation of the right to the reasonable time of judicial proceedings

The Court was empowered to decide about the reasonable time of judicial proceedings in the Amendments of the Constitution in 2000, but it did not start to deal with constitutional complaints of this kind until the amendments of the CACCRC in 2002, i.e. until after the CACCRC was brought into harmony with constitutional amendments.

11. The Court is empowered to institute proceedings even before all legal remedies have been exhausted on the grounds of Article 63/1 (last part of the sentence) of the CACCRC, which provides: "(1) The Constitutional Court shall institute proceedings in response to a constitutional complaint even before all the legal remedies have been exhausted in cases (...) when the disputed individual act grossly violates constitutional rights and it is completely clear that grave and irreparable consequences may arise for the applicant if Constitutional Court proceedings are not instituted." Constitutional complaints of this kind are marked U-IIIB.

12. Decision of the Court, No. U-IIIB-1005/2004 (*Narodne novine*, No. 96/04).



Article 29/1 of the Constitution and in Article 6/1 of the European Convention for the Protection of Human Rights and Fundamental Freedoms provide the legal grounds for deciding on the reasonable time of judicial proceedings.¹³

Article 29/1 of the Constitution provides:

"In the determination of his rights and obligations, or of the suspicion or the charge of a penal offence against him, everyone shall have the right to a fair trial within a reasonable time by an independent and impartial court established by law."

Article 6/1 (first sentence) of the Convention provides:

"RIGHT TO A FAIR TRIAL

In the determination of his civil rights and obligations or of any criminal charges against him, everyone is entitled to a fair (and public)¹⁴ hearing within a reasonable time by an independent and impartial tribunal established by law."

The right to a trial in a reasonable time, provided for in the Constitution and Convention, was elaborated in 2002 in Article 63 of the amended CACCRC, which provides:

"(1) The Constitutional Court shall initiate proceedings in response to a constitutional complaint even before all legal remedies have been exhausted in cases when the court of justice did not decide within a reasonable time about the rights and obligations of the party, or about the suspicion or accusation for a criminal offence (...)

(2) If the decision is passed to adopt the constitutional complaint for not deciding in a reasonable time in paragraph 1 of this Article, the Constitutional Court shall determine a deadline for the competent court of justice within which that court shall pass the act meritoriously deciding about the applicant's rights and obligations, or the suspicions or accusation of a criminal offence. Such deadline for passing the act shall begin to run on the day following the date when the Constitutional Court decision is published in the Official Gazette Narodne novine.

(3) In the decision in paragraph 2 of this Article, the Constitutional Court shall determine appropriate compensation for the applicant for the violation of his/her

13. The Convention entered into force in relation to the Republic of Croatia on 5 November 1997. The Ratification Act of the Convention for the Protection of Human Rights and Fundamental Freedoms and Protocols Nos. 1, 4, 6, 7 and 11 Thereto was enacted by the Croatian Parliament at its sitting of 17 October 1997, and it was published in *Narodne novine - Me_unarodni ugovori*, No. 18/97. The consolidated wording of the Act was published in *Narodne novine - Me_unarodni ugovori*, No. 6/99 (8/99-corr.), and Protocols 12 and 13 to the Convention in were published *Narodne novine - Me_unarodni ugovori*, No. 14/02.

14. The Republic of Croatia made a reservation in respect of Article 6/1 of the Convention in the part providing for a *public hearing* (because proceedings before the Administrative Court of the Republic of Croatia are not public).

constitutional right committed by the court of justice by not deciding within a reasonable time about his/her rights and obligations, or about the suspicions or accusations of a criminal offence. The compensation shall be paid from the state budget within a term of three months from the date when the applicant lodged a request for its payment."

In accordance with the above, if the Court finds that a specific judicial proceeding has been ongoing for an unreasonable time, it has the power to take two steps:

- first, in the decision accepting the constitutional complaint the Court gives the competent court a deadline for passing judgment, on the merits of the case, concerning the applicant's rights and obligations, or concerning criminal charges against him;

- second, in the same decision the Court sets appropriate damages for the applicant for the judicial violation of his constitutional right to a judgment in a reasonable time about his rights and obligations, or about criminal charges against him. Such damages are paid from the state budget within a term of three months from the date when the applicant lodged a request for their payment.

In proceedings deciding about the reasonable time of judicial proceedings the Croatian Constitutional Court has adopted the standards of the European Court of Human Rights in Strasbourg (hereinafter: the European Court). Accordingly, the Court considers the time of judicial proceedings from the date when the European Convention entered into force in the Republic of Croatia (i.e., from 5 November 1997), and during its proceedings it takes the following into account:

- the complexity of the case,
- the contribution of courts and other competent bodies to the duration of the proceedings,
- the contribution of the applicant of the constitutional complaint to the duration of the proceedings,
- special circumstances that justify the duration of the proceedings, and
- the importance of the case for the applicant.

STATISTICAL DATA:

In the period from May 2002 to 15 November 2005 the CC filed 3,211 constitutional complaints for unreasonable time of judicial proceedings, and by that date it solved 1,602 complaints (49,89%). In 686 cases the CC found that the applicant's right to the reasonable time of judicial proceedings had been violated (42,82%). The applicants were assigned a total of 6.910.755,00 kunas (935,149.53 Euros) in appropriate compensation (just satisfaction).



EXAMPLE:

Annexed to this paper is an example of a decision in which the Court found that the applicant's right to a reasonable time of judicial proceedings was violated (see ANNEX I).

The European Court has found on numerous occasions that this new provision of the CACCRC provided an effective remedy in respect of complaints concerning the excessive length of judicial proceedings, including enforcement proceedings.¹⁵

The Resolution ResDH(2005)60 concerning the judgements of the European Court of Human Rights in the case of Horvat and 9 other cases against Croatia relating to the excessive length of certain civil proceedings and the right to an effective remedy, adopted by the Committee of Ministers of the Council of Europe on 18 July 2005 at the 933rd meeting of the Ministers' Deputies, contains the following assessment of how the Republic of Croatia complies with the obligations emerging from the Convention:

"Having satisfied itself that the Government of Croatia paid all the applicants, within the time-limits set, the sums awarded by the European Court as just satisfaction (...);

Having noted the individual measures taken by the authorities to grant the applicants redress for the violations found (*restitutio in integrum*), in particular by accelerating as far as possible those proceedings which were still pending after the finding of violations by the Court (...);

Considering furthermore the general measures taken to prevent new violations of the same kind as those found in the present judgements; (...);

Welcoming in particular the legislative reform establishing, in conformity with the Convention's requirements, an effective remedy at the national level making it possible to complain of the excessive length of judicial proceedings;

Welcoming furthermore the direct effect increasingly granted to the European Court's judgements by the Croatian Constitutional Court and stressing the importance of these developments for effective prevention of new violations of the Convention,

Declares, after having examined the information supplied by the Government of Croatia, that it has exercised its functions under Article 46, paragraph 2, of the Convention in these cases".

Nevertheless, extending the jurisdiction of the CC to deciding on the reasonable time of judicial proceedings has in the last three years been a great burden on its work.

15. See the judgement *Rado_ and others against Croatia* (07/11/2002) and admissibility decisions in the cases of *Slavi_ek* (decision of 04/07/2002), *Nogolica* (decision of 05/09/2002), *Plaftak and others* (decision of 03/10/2002), *Jefti_* (decision of 03/10/2002) and *Sahini* (decision of 11/10/2002).

It has distanced the Court even further from its classical and most important work – the abstract control of laws and other regulations. On the other hand, the great number of constitutional complaints grounded in Article 63 of the CACCRC, together with the great number of primary constitutional complaints, which is growing every day, threatens to make proceedings before the Court itself last for an unreasonably long time.

Considering the in any case too broad jurisdiction of the Court, the Court was forced, on 24 February 2005, to deliver a Report to the Croatian Parliament cautioning Parliament about the unacceptable position in which the practice of constitutional justice in the Republic of Croatia has found itself because the Court decides on the reasonable time of judicial proceedings. In the Report the Court has especially emphasised the following:

"2. (...)

The total workload of the Constitutional Court, and especially its workload of constitutional complaints, of which those concerning the right to a trial in a reasonable time is growing progressively, is seriously threatening the capacity of the Constitutional Court to realise its jurisdiction in a suitable manner and within reasonable deadlines, especially its work in connection with reviewing the constitutionality of laws and the constitutionality and legality of other regulations, which is its basic jurisdiction.

3. At present the constitutional complaint is the only means of protecting the right to a trial in a reasonable time in the legal order of the Republic of Croatia. (...)

Because of the problems concerning the inefficiency of the Croatian judicial system observed, the Constitutional Court informs the Croatian Parliament of the great need for regular and specialised tribunals to participate in establishing violation of the right to a trial in a reasonable time, to set the deadlines for completing judicial proceedings, and to determine the appropriate damages for the violation suffered.

The Constitutional Court observes that a procedure must be regulated in the Judicial Act for the protection of the right to a trial in a reasonable time. With all due respect for the Constitutionally defined jurisdiction of the Constitutional Court, the Constitutional Court should remain empowered to decide only after the parties have exhausted all the legal expedients for the protection of this right before the competent courts.

4. To set up an efficient system for the protection of human rights and fundamental freedoms, including the protection of the constitutional right to a trial in a reasonable time, and for the efficient realisation of the other Constitutionally defined powers of the Constitutional Court, whose efficiency has been seriously impaired by the excessive number of cases brought before it, the Constitutional Court hereby also informs the



Croatian Parliament about the need to amend the existing or possibly enact a new Constitutional Act on the Constitutional Court of the Republic of Croatia." ¹⁶

The above Report prompted the Government of the Republic of Croatia to bring before the Croatian Parliament the proposal for the Act on the Revisions and Amendments of the Judicial Act, which the Croatian Parliament enacted on 9 December 2005.

These changes make the CC the last instance for deciding on violations of the right to a reasonable time of judicial proceedings. A constitutional complaint will only be possible against the second-instance rulings of the Supreme Court of the Republic of Croatia, which will have jurisdiction in the second (appellate) instance of control of the length of judicial proceedings before lower-instance courts, and against the first-instance rulings of the Supreme Court of the Republic of Croatia when it, as a court of first instance, decides on the reasonable time of judicial proceedings before county (second-instance) courts, and before the High Commercial Court, Administrative Court of the Republic of Croatia and the High Misdemeanour Court. It remains to be seen whether the European Court will find the new system for the institutional protection of the right to the reasonable time of judicial proceedings in the Republic of Croatia an effective remedy at a national level.

V. CONCLUSION

The above analysis shows that the implementation of Constitutional Court decisions cannot be considered a major problem in the legal order of the Republic of Croatia to a degree that would demand taking particular measures or even changing existing legislation.

The efficient implementation of the Court's decisions is greatly ensured by the very fact that the Court is empowered to repeal, quash and annul (it repeals laws, repeals and annuls other regulations, and quashes the individual decisions of courts and other competent bodies), i.e. by the fact that the decisions of the Court produce direct legal effects by force of the Constitution itself.

Furthermore, the Constitution and the CACCRC explicitly lay down that the Court's decisions are binding for all, that all the bodies of the central government and of local and regional self-government are obliged to implement its decisions, and that the Government of the Republic of Croatia is obliged to ensure this implementation through the bodies of the central administration.

Finally, the Court itself has the authority to determine, in its decisions, which body is authorized to implement its decision and how the decision will be implemented.

16. Report to the Croatian Parliament, No. U-X-835/2005 of 24 February 2005, *Narodne novine*, No. 30/05.

The legal instruments for ensuring the implementation of the decisions of the Constitutional Court of the Republic of Croatia could thus be an interesting and useful contribution to the discussion of the problems of the implementation of decisions of constitutional courts in general. The Report delivered to the Croatian Parliament, however, shows that the Constitutional Court of the Republic of Croatia is obviously extremely overburdened, which is mostly the result of its too broad jurisdiction. The Croatian Constitutional Court has one of the broadest jurisdictions of any constitutional court. This (too) broad jurisdiction of the Court is becoming an obstacle to its efficiency, which is especially expressed in the Court's decision-making about constitutional complaints. Therefore, a change in national legislation is necessary to reduce the jurisdiction of the Court, especially in relation to constitutional complaints.

ANNEX I:

Decision of the Court, No. U-III A-880/2002 (finding a violation of the right of the applicant of the constitutional complaint to the reasonable time of a judicial proceeding)

ANNEX I

CONSTITUTIONAL COURT OF THE REPUBLIC OF CROATIA (CASE-LAW: TIME OF JUDICIAL PROCEEDINGS)

File number: U-III A / 880 / 2002

Decision: Decision to accept a constitutional complaint.

Conclusion: The Constitutional Court (hereinafter: the CC) has determined that invoking the organizational or personnel problems of the Court could not be considered a justified reason for the unreasonable long lack of activity by the Court in this court procedure, since the contracting parties of the Convention for the Protection of Human Rights and Fundamental Freedoms are obliged to organize their legal systems in a manner which enables the courts to fulfil the request stipulated by Art. 6.1 of the European Convention.

The Constitutional Court of the Republic of Croatia, in the composition of Smiljko Sokol, the President of the Court and the judges Marijan Hranjski, Petar Klaric, Mario Kos, Jurica Malcic, Ivan Matija, Ivan Mrkonjic, Jasna Omejec, Zeljko Potocnjak, Agata Racan, Emilija Rajic, Vice



Vukojevic and Milan Vukovic, in a procedure conducted with regard to the constitutional complaint of D. M.-M. from S., represented by I. M., a lawyer from S., at the Session of the Court held on 10 July 2002, passed the following.

DECISION

I. The constitutional complaint is adopted.

II. The Municipal Court in S. is obliged to pass a verdict in the case which is conducted before that Court under the number I-P-394/94 within the shortest possible period of time, but not longer than six (6) months, counting from the first day after the publication of this Decision in the “Official Gazette”.

III. Pursuant to Article 63, Paragraph 3 of the Constitutional Law on the Constitutional Court of the Republic of Croatia (“Official Gazette”, No. 49/02 – cleared text), the proponent of the constitutional complaint, D. M.-M. from S. is hereby awarded an adequate compensation for the violation of a constitutional right as per Article 29, Paragraph 1 of the Constitution of the Republic of Croatia (“Official Gazette”, No. 41/01 - cleared text) in the amount of 4,500.00 (four thousand and five hundred) HRK.

IV. The compensation as per Item 3 of the dictum of this Decision will be paid from the state budget, within three months from the day of the proponent’s submission of the request for its payment.

V. This decision will be published in the “Official Gazette”.

Statement of reasons

1. Pursuant to the provision of Article 63 of the Constitutional Law on the Constitutional Court of the Republic of Croatia (“Official Gazette”, No. 49/02 – cleared text, hereinafter: the Constitutional Law), the proponent of the constitutional complaint, submitted a constitutional complaint against the Municipal Court in S. on 25 April 2002, “because of the non-passing of an act – a court verdict within a reasonable period of time”.

Due to the non-passing of a court verdict within a reasonable period of time, the proponent deems that the constitutional rights as per Article 26 and Article 29, Paragraph 1 of the Constitution of the Republic of Croatia were violated.

In the constitutional complaint, the proponent requests from the Constitutional Court to order the Municipal Court in S. a 6-month deadline for the passing of a competent decision in the case which is conducted before that Court under the number I-P-394/94 and to determine an

adequate compensation to the proponent in the amount of 40,000.00 HRK due to the violation of her constitutional right, which occurred when the Municipal Court in S. failed to decide upon the rights and obligations of the proponent within a reasonable period of time.

THE FACTS SIGNIFICANT FOR THE CONSTITUTIONAL COURT'S PROCEDURE

2. The Constitutional Court has, in the procedure initiated by the constitutional complaint, by the application of Article 63 of the Constitutional Law, determined the following facts which are legally relevant for deciding upon the violation of the constitutional right of the proponent, guaranteed by Article 29, Paragraph 1 of the Constitution of the Republic of Croatia:

- on 14 March 1994, the proponent filed a lawsuit with the Municipal Court in S. against "C.o.", Inc. Z., due to the payment pursuant to the insurance policy for property,

- on 1 March 1995, the defendant "C.o.", Inc. Z. submitted a written reply to the lawsuit,

- the first hearing in the case, which is conducted before the Municipal Court in S. under the number I-P-394/94, was held on 15 March 1995. At that hearing, the Court ordered the defendant, by a ruling, to forward the general conditions for the insurance of property which were valid at the time of the harmful event (11 July 1991) for the file within 15 days and determined that it will require an information from the Ministry of the Interior in S. "with regard to the fire which occurred in Z. – P., in which a two-storey housing facility burned down". By the same ruling, the competent court decided that the next hearing would take place upon the collection of the requested information,

- on 24 May 1995, the proponent of the constitutional complaint requested in writing from the Municipal Court in S. to schedule a new hearing and to inform the plaintiff whether the defendant complied with the order of that Court, that is, whether the competent court obtained the information from the Ministry of the Interior in S.,

- on 6 November 1995, the proponent of the constitutional complaint again requested in writing from the Municipal Court in S. to schedule a hearing. By the same letter, the proponent informed the competent court that the file was kept at the Ministry of the Interior in S. under the number KU 4547/91, in the Municipal State Prosecutor's Office under the number KTN-3239/91 and in the Investigative Centre of the County Court in S. under the number KIR-540/91.

- on 28 October 1998, the proponent of the constitutional suit again requested in writing from the Municipal Court in S. to schedule a hearing in the litigation case No. I-P-394/94, with a repeated request that the Municipal Court in S. obtains the files marked in its report of 6 November 1995.

STATEMENT OF THE MUNICIPAL COURT IN S.

3. Pursuant to Article 69, Paragraph 2 of the Constitutional Law, the Constitutional Court



to the allegations in the constitutional complaint within 30 days from the day of receipt of the request.

Upon the expiration of the deadline in which the Municipal Court in S. failed to comply with the request of the Constitutional Court, the Constitutional Court again requested the statement of the Municipal Court in S. in a letter dated 7 June 2002.

In a statement forwarded on 20 June 2002, the Municipal Court in S. emphasises that “the allegations from the constitutional complaint were correct, insofar as the plaintiff accidentally stated in the complaint that the insured facility completely burned down, while, actually, the facility was mined, thus the court unnecessarily requested information from police stations whether activities were undertaken with regard to the arson on the plaintiff’s facility”.

Furthermore, the Municipal Court in S. emphasises that “indeed, no hearings were scheduled after 15 March 1995, despite the fact that the plaintiffs requested in their submissions received on 24 May 1995, on 16 November 1995 and, finally, on 28 October 1998, the scheduling of a hearing. (...) As the only objective circumstance which justifies the slowness of this Court, we must say that the competent judge (...) was on sick leave, on maternity leave (third child), while the competent judge is currently on sick leave”.

THE RIGHT WHICH IS SIGNIFICANT FOR THE CONSTITUTIONAL COURT’S PROCEDURE

4. The provision of Article 29, Paragraph 1 of the Constitution of the Republic of Croatia (“Official Gazette”, cleared text, No. 41/01) stipulated the following:

“Everyone shall be entitled to have an independent and impartial court, established by law, deciding on his rights and obligations, within a reasonable period of time (...).”

The provision of Article 63, Paragraph 1 of the Constitutional Law stipulated the following:

(1) The Constitutional Court shall initiate a procedure upon a constitutional complaint even before legal remedies have been exhausted, in case when a court failed to pass a decision on the rights and obligations of a party (...) within a reasonable period of time (...).

(2) In a decision in which it adopts a constitutional complaint due to the non-passing of an act within a reasonable period of time as per Paragraph 1 of this Article, the Constitutional Court shall determine a deadline for the competent court for the passing of an act whereby that court would competently decide on the rights and obligations (...) of the proponent. The deadline for the passing of the act starts on the next day from the day of publication of the Constitutional Court’s decision in the “Official Gazette”.

(3) In a decision as per Paragraph 2 of this Article, the Constitutional Court shall determine an adequate compensation which belongs to the proponent because of the violation of his constitutional right which was caused by a court when it failed to pass a decision on his rights

and obligations (...) within a reasonable period of time. The compensation shall be paid from the state budget within three months from the day of submission of the party's request for its payment.

THE CONSTITUTIONAL COMPLAINT IS FOUNDED.

5. The Constitutional Court considers the violation of the constitutional right to have a court decision passed within a reasonable period of time in the light of special circumstances of each individual case.

Having considered the grounds for the proponent's constitutional complaint and the forwarded statement of the Municipal Court in S., the Constitutional Court has determined that in this case, the preconditions were created for its action in the sense of the provision of Article 63 of the Constitutional Law.

The Constitutional Court explains its decision with the following determinations:

5.1 THE LENGTH OF A COURT PROCEDURE

The litigation procedure of first instance was initiated on 14 March 1994, by filing a lawsuit with the Municipal Court in S. Since the constitutional complaint was filed on 25 April 2002, and the court procedure of first instance had not been completed until that day, the Constitutional Court determines that, by the day of filing the constitutional complaint, the procedure of first instance before the Municipal Court in S. lasted for a total of eight (8) years, one (1) month and eleven (11) days.

However, the Constitutional Court states that the Law on Ratification of the Convention for the Protection of Human Rights and Basic Freedoms and Protocols No. 1, 4, 6, 7 and 11 to the Convention for the Protection of Human Rights and Basic Freedoms ("Official Gazette" – International Agreements, No. 18/97, 6/99 – cleared text, hereinafter: the Law on Ratification of the Convention) came into effect on 5 November 1997.

Since the day of coming into effect of the Law on Ratification of the Convention, the provisions of the Convention for the Protection of Human Rights and Basic Freedoms of the Council of Europe (hereinafter: the European Convention) comprise, pursuant to Article 134 of the Constitution of the Republic of Croatia ("Official Gazette", No. 56/90) a part of the internal legal system of the Republic of Croatia. Since that day, the provision of Article 6, Paragraph 1 of the European Convention titled "The Right To A Fair Trial" also comprises a part of the internal legal system of the Republic of Croatia, which stipulates, inter alia, the following:

"In order to determine his rights and obligations of civil nature (...) everyone shall be entitled



to have his case examined by an independent and impartial court established by law (...) within a reasonable period of time”.

In compliance with the above-mentioned, the right stemming from the Convention pertaining to the passing of a court decision within a reasonable period of time constitutes a part of the internal legal system of the Republic of Croatia since the day of coming into effect of the Law on Ratification of the Convention (5 November 1997). On the other hand, the right to the passing of a court decision within a reasonable period of time is determined by the constitutional right in the Republic of Croatia on 9 November 2000, by the amendments to Article 29, Paragraph 1 of the Constitution of the Republic of Croatia (“Official Gazette”, No. 113/2000). Due to the stated reasons, as a rule, the examination of the prudence of lasting of court procedures prior to 5 November 1997 could not have been the subject of Constitutional Court’s procedures based on Article 63 of the Constitutional Law, because in the former legal system of the Republic of Croatia, such right did not exist, neither as a conventional, nor as a constitutional right.

The Constitutional Court assessed, in the specific case, that legally relevant period of time from the aspect of the right to a reasonable length of a court procedure is deemed to be the period between 5 November 1997 (that is, since the day of coming into force of the Law on Ratification of the Convention) and 25 April 2002 (that is, until the day of submission of the proponent’s constitutional complaint), which amounts to a total of four (4) years, four (4) months and twenty (20) days.

5.2 THE ACTION OF THE COMPETENT COURT

The Constitutional Court determines that, in the examined period of time, the Municipal Court in S. failed to take a single action which would be relevant for the competent decision-making on the rights and obligations of parties in that court procedure.

Therefore, it is a period of complete lack of activity of the competent court in a litigation procedure of first instance in a matter of civil nature.

5.3 BEHAVIOUR OF THE PROPONENT OF THE CONSTITUTIONAL COMPLAINT (THE PLAINTIFF IN THE COURT PROCEDURE)

The proponent of the constitutional complaint, as the plaintiff in the court procedure, did not contribute in any manner, by her behaviour, to the length of the court procedure of first instance. On the contrary, the proponent addressed the competent court on several occasions, in writing,

trying to accelerate the procedure and requesting from the competent court the performance of appropriate actions in that procedure (see Item 2, Sub-paragraphs 4 to 6 of the explanation of this Decision).

5.4 COMPLEXITY OF THE COURT CASE

The former course of the court procedure does not indicate that this specific case involves a complex court matter.

The criteria, according to which one assesses the complexity of a court case (the extensiveness of presentation of necessary evidence, the number of potential witnesses who should be heard during the procedure, possible need for the conduct of expert evaluation procedure, the time necessary for the circulation of the file in cases which require co-operation of several bodies, the conduct of a court procedure at several levels, that is, the return of the matter to the court of lower instance for a repeated deciding and other actions and procedures which could lead to the conclusion that the issue at stake is a complex court matter, due to which the court procedure could justifiably last for a long period of time, in its entirety or in an individual part thereof in the specific case, which has been going on continuously in a procedure before the court of first instance since 1994, while only one hearing was scheduled on 15 March 1995, have not been satisfied.

5.5 OTHER CIRCUMSTANCES WHICH INFLUENCE THE LENGTH OF A COURT PROCEDURE

With regard to the emphasis by the competent court of first instance that the sick leave of competent judges could be deemed as “an objective circumstance which justifies the slowness” of that Court, the Constitutional Court determines that invoking the organisational or personnel problems of the Court could not be considered a justified reason for the unreasonable long lack of activity by the Court in this court procedure.

It is mentioned that the European Court for Human Rights, in several of its verdicts, explicitly determined that states – contracting parties are obliged to organise their legal systems in a manner which enables the courts to fulfil the requests stipulated by Article 6, Paragraph 1 of the European Convention, repeatedly stressing the particular importance of that request for a



regular and proper conduct of court procedures (see, for example, the verdicts of the European Court in cases *Buchholz vs. Germany* of 6 May 1981, *Guincho vs. Portugal* of 10 July 1984, *Union Alimentaria Sanders SA* of 7 July 1989, *Brigandi vs. Italy* of 19 February 1991 etc.).

6. In compliance with the mentioned, the Constitutional Court assesses that the unreasonably long lack of activity of the Municipal Court in S. violated the constitutional right of the proponent to have an independent and impartial court, established by law, decide on her rights or obligations within a reasonable period of time, which is guaranteed by Article 29, Paragraph 1 of the Constitution of the Republic of Croatia.

7. Bearing in mind all the stated facts and circumstances, and particularly the period of time of complete lack of activity of the court of first instance in the specific court case, a decision is passed as per Items I and II of the statement of this Decision, in the sense of the provision of Article 63, Paragraph 2 of the Constitutional Law.

8. In compliance with the provision of Article 63, Paragraph 3 of the Constitutional Law, it was decided as in Items III and IV of the statement of this Decision.

The Constitutional Court determines the amount of compensation due to the violation of the constitutional right to have a court decision passed within a reasonable period of time, as a rule, for the examined, legally relevant period of time, with an exceptional possibility of respecting the unreasonably long period of complete lack of activities of the Court even prior to 5 November 1997, which depends on particular circumstances of each individual case.

While determining the amount of compensation pursuant to Article 63, Paragraph 3 of the Constitutional Law, the Constitutional Court takes into account all circumstances of the case, while simultaneously respecting the total economic and social circumstances in the Republic of Croatia.

Since the Constitutional Court is authorised, pursuant to Article 63, Paragraph 2 of the Constitutional Law, to also determine the deadline for the passing of a court decision in each individual case, the amount of compensation in the specific case was also influenced by the fact that the Municipal Court in S. was, pursuant to Item II of the statement of this Decision, provided with a short deadline in which that Court is obliged to pass a decision in the case No. I-P-

394/94, whereby the purpose of the court procedure itself is exercised in the most efficient manner.

9. The president of the Municipal Court in S. is obliged to forward to the Constitutional Court a written notice of the dates when the decision has been adopted and sent to the parties within eight days from the day when the decision was sent, but not later than eight days after the expiry of the time limit set in point II. of this decision. The said instruction (order) is founded in Article 31 paras. 4 and 5 of the Constitutional Court Act.

10. The decision on the publication (Item V of the statement) is based on the provision of Article 29 of the Constitutional Law.
